

## **REMARKS**

Claims 1, 3-6, 8, and 10 are pending in this application. By this Amendment, claim 1 is amended and claims 9 and 11-76 are canceled without prejudice to or disclaimer of the subject matter recited therein. Applicants reserve the right to pursue the canceled subject matter in one or more divisional or continuation applications. No new matter is added.

### **I. Interview**

The courtesies extended to Applicants' representatives by the Examiner at the telephone interview held January 5, 2011, are appreciated. The reasons presented at the interview warranting favorable action are incorporated into the remarks below, which constitute Applicants' record of the interview. As agreed during the interview and subsequent communications, the amended claims and the attached Declarations appear to overcome the current rejections.

### **II. Request for Correction of Inventors under 37 C.F.R. §1.48(b)**

Due to the cancellation of claims 11-76, the inventions by Elliot L. Chaikof, Karthik Nagapudi, William T. Brinkman, and Sonha C. Payne are no longer being claimed. Accordingly, pursuant to 37 C.F.R. §1.48(b), Applicants hereby request deletion of the following inventors: Elliot L. Chaikof, Karthik Nagapudi, William T. Brinkman, and Sonha C. Payne. Also, the fee (as set forth in 37 C.F.R. §1.17(i)) pursuant to 1.48(b) is attached.

### **III. The Claims Define Patentable Subject Matter**

Claims 1, 3-6, 8-11, 33, 34 and 37-40 are rejected under 35 U.S.C. 102(a) over Wright and Conticello (Adv. Drug Deliv. Rev., Oct. 2002, 54: 1057-73) (hereinafter the "Wright and

Conticello reference"). The rejection of canceled claims 11, 33, 34 and 37-40 is moot and the rejection of the currently pending claims is respectfully traversed.

The Office asserts that the Declaration submitted under 37 CFR § 1.132 to remove the Wright and Conticello reference as not "by another" is insufficient. Although Applicants continue to traverse the Office's characterization of the Declarations and the standard applied to those Declarations, in the interest of facilitating prosecution and based on the amendments to the claims, Applicants submit herewith a revised Declaration under 37 CFR 1.132 that addresses the currently pending claims and clarifies that the cited reference is not by another.

Applicants believe the Wright and Conticello reference is not properly available as prior art to the present application because it is not "by others" as required by 35 U.S.C. § 102(a). As clarified in *In re Katz*, 215 USPQ 14, 17 (CCPA 1982), "one's own work is not prior art under § 102(a) even though it has been disclosed to the public in a manner or form which otherwise would fall under § 102(a)." Furthermore, *Ex parte Maner*, 133 USPQ 404, 405 (BPAI 1961) clarified that a publication by less than all the inventors published less than one year before the application filing date may be removed as a reference by the filing of an affidavit by the authors.

Applicants submit herewith executed Declarations that establish the cited Wright and Conticello reference represent Applicants' own work, and the reference should not be cited against this application in view of the publication is less than one year prior to the filing date of the patent applications from which this application claims priority.

Inventors Elizabeth R. Wright and Vincent P. Conticello are coauthors of the Wright and Conticello reference. Attached are executed Declarations under 37 C.F.R. 1.132 by Drs. Wright and Conticello establishing that the subject matter discussed in the article is based on their collaboration with coinventor, Robert A. McMillian.

In view of the above arguments and attached evidence in the form of Declarations, the Wright and Conticello reference is not a proper 35 U.S.C. § 102(a) reference. Therefore, reconsideration and withdrawal of the rejection are respectfully requested.

**IV. Conclusion**

In view of the foregoing, all of the pending claims in this application are believed to be in condition for allowance.

Should the Examiner have any questions or determine that any further action is desirable to place this application in even better condition for allowance, the Examiner is encouraged to contact the Applicant's representative at the number listed below.

**V. Extension of Time Fees**

A credit card payment submitted via EFS Web in the amount of **\$685.00**, representing: **\$555.00** for the 3-months extension of time as set forth in 37 C.F.R. § 1.17(a)(3) for a small entity and **\$130.00** for the fee for the Request for Correction of Inventors under 37 C.F.R. §1.48(b), as set forth in 37 C.F.R. §1.17(i).

Applicants believe that this amount is the correct amount; however, should the Commissioner determine otherwise, the Commissioner is authorized to change Deposit Account No. 50-1311 any fees that are required, or to credit to the same account any overpayment of fees.

Kindest Regards,

Date: January 28, 2011

/Randi Beth Isaacs/

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